From: John Travis
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Gallagher Sharp Newsflash: Exclusion for Claims "Arising Out Of" Other Owned Premises

On April 20, 2011, the Supreme Court of Ohio decided *Westfield Ins. Co. v. Hunter*, 2011-Ohio-1818. The court reversed summary judgment in favor of Westfield on a claim involving real property Westfield did not insure. The court held in its syllabus: "An exclusion in a homeowner's insurance policy for claims 'arising out of' premises owned by the insured other than the insured location excludes coverage for premises-based liability claims, such as claims that arise from the quality or condition of the premises. Moreover, although the exclusion does not bar coverage of claims that arise from the insured's alleged negligence if that negligence is unrelated to the quality or condition of the premises, it does exclude coverage for claims based upon the insured's ownership of the property upon which the injury occurred."

In this case Plaintiff Westfield issued Defendants Michael and Marilyn Hunter a homeowners policy on their home in Hamilton, Ohio. The Hunters also owned a farm in Indiana that was not listed on the policy as an insured location. Grinnell Mutual Reinsurance Company insured the Hunters' farm. The Hunters' grandchild, Terrell Whicker, and another relative, Ashley Arvin, were riding all-terrain vehicles on the Hunters' farm. Ashley caused her vehicle to strike Terrell's vehicle. He was injured, and a bodily injury suit was brought against Ashley, her mother and stepfather, and the Hunters. The suit alleged that the Hunters knew of Ashley's "reckless and/or negligent tendencies," "had the ability and duty to exercise control" over Ashley, but breached that duty and that as "a proximate and foreseeable result of the negligence" of the Hunters, Terrell sustained injuries. Westfield sought a declaratory judgment that Westfield had no duty to defend or indemnify the Hunters, and Grinnell counterclaimed that both insurers provided coverage on a pro rata basis. Cross-motions for summary judgment were filed and the trial court granted Westfield's motion, holding that the bodily injury claims "arose out of" premises that were not insured by Westfield. The court of appeals affirmed.

The Supreme Court noted that the Ohio appellate courts that have considered the exclusion for claims "arising out of" other property in the context of homeowner's policies had reached different results. Some courts had held "that in order for the coverage to be excluded, there need only be some causal link to the property rather than a showing that the premises were the proximate cause of the injury." Other courts had adopted "[a] narrower view of the exclusion" -- "that an injury arises out of the premises, and coverage is ... excluded, only if there is a dangerous condition on the premises that causes or contributes to the bodily injury for which coverage is sought."

Justice O'Connor in the court's lead opinion found that the narrower view was the better reasoned view, and held that the exclusion in Westfield's policy permitted coverage for claims like the one at issue. Because of a "barren record", though, the case was remanded to the trial court to determine "whether the claims raised in the underlying action are claims related to the quality or condition of the premises or whether the claims are based on another theory of negligence." Whether Westfield ultimately will owe coverage, therefore, is yet to be determined.

Justice O'Connor explained, "If the [underlying complaint] is based on the theory that the Hunters failed to properly supervise Ashley while she was on the Hunters' property and that that failure gave rise to

Terrell's injuries, then the exclusion does not bar coverage in this case"; however, "if the theory of negligent supervision is a subterfuge to avoid the 'other premises' exclusion because the [underlying claims] are based on the Hunters' ownership of the property, then the coverage is not available." Finally, Justice O'Connor concluded, "Insurers are free to draft exclusions to more fully preclude coverage for occurrences like that at issue in this litigation, but the use of the causal phrase 'arising out of' in the exclusion is insufficient to do so." She offered as an example a clause excluding accidents that happen "in connection with" owned, but uninsured, premises.

Justices Pfeifer and Brown concurred in Justice O'Connor's opinion. Justice Cupp concurred only in the syllabus and judgment, and wrote that the court of appeals decisions cited in the lead opinion were not in conflict with each other "[b]ecause of the coverage-versus-exclusion distinction." Justices O'Donnell and Lanzinger wrote separate dissenting opinions, and Justice Stratton joined in Justice Lanzinger's dissenting opinion. Justice O'Donnell agreed with the court of appeals that the narrower view that the majority adopted "changes the language of the policy to require that the injury must arise out of *a condition* on the premises, here, a dangerous condition." Justice Lanzinger found, "The very existence of the two policies, each obtained by the Hunters to provide coverage for their respective premises, makes clear that the parties intended to exclude coverage for injuries occurring at the premises they own that are not insured locations under the respective policies."

The link to read the Court's opinion is:
http://www.supremecourtofohio.gov/rod/docs/pdf/0/2011/2011-ohio-1818.pdf

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